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Legislative process





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BACKGROUND PAPER FOR PARLIAMENTARIANS

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Cat. No. YM32-2/151E

ISBN 0-660-12442-4





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THE LEGISLATIVE PROCESS

INTRODUCTION

Parliamentary procedure, as it is understood in countries which have inherited British parliamentary institutions, may be said to consist of three elements: traditional practice, the Standing Orders, and parliamentary case-law. The traditional element has evolved as Parliament itself has evolved. England's early Parliaments formulated their practices to protect the rights of members from the encroachments of tyrannical monarchs. As the reality of power gradually came to reside less with the Crown and more with the Cabinet, it was the overweening Minister who tended to threaten parliamentary freedom, and the ancient practices were retained as an effective safeguard. These unwritten rules thus remain to this day as the essential basis of procedure. The Standing Orders - a book of written rules - is a relatively recent development of procedure, and is designed to modify the older practices and to introduce new ones, according to the changing requirements of the day. Parallel with these two planks of procedure, the ancient and the modern, is the case-law, the accumulated precedents handed down over the years by successive Speakers and Chairmen through their interpretations of both the traditional practice and the Standing Orders.

A. Parliamentary Principles and Traditions

No bill can become law without being adopted by the House of Commons and the Senate and signed by the Queen or her representative. The rather complicated rules of procedure are designed to facilitate this

process and to give the Government the means it requires to carry out its program while giving the Opposition the opportunity to criticize and force delay. The rules are based on certain principles and, before looking at how bills go through the House of Commons and its committees, it might be useful to outline some of them. Perhaps the key point is that, except for a few elementary points dealt with in the Constitution Act, 1867, the House is the master of its own proceedings. The Act fixes the quorum of the House, prescribes that questions are to be decided by simple majority vote, prohibits the Speaker from voting except in the case of a tie, makes English and French equal languages for all purposes of the House, denies Private Members the right to initiate bills requiring the appropriation of public money, etc. The Prime Minister decides when a session starts and ends, but what the House does in each session and how it does it are matters decided by the House itself.

The days and hours of sitting, the adjournments, the time allotted to Private Members, the time limits for debate and many other questions of order and procedure are laid down in the Standing Orders. For example, if the House were to decide that all public bills needed to be read out four times instead of three, this would merely be a matter of changing the Standing Orders. Thus the House can change its procedures freely to suit its needs and conditions; it is not even bound by its own rules, for the Standing Orders can be waived with unanimous consent. This is often done in regard to the requirement that notice be given for bills and for many other routine matters.

Another principle is that the session, not the sittings, and not the life of Parliament, is the basic unit for procedural purposes. There is normally one session each year beginning with a Throne Speech although in recent times some sessions have lasted more than two years and one lasted more than three and a half years. The House is able to express an opinion only when it is in session and at the end of each session all Orders of the House expire. Thus no Standing or Special Committee may sit between sessions and the end of a session wipes the legislative slate clean and frees the House from all business which for one reason or another it has not completed. No bills carry over from one session to another,



although with unanimous consent the House may revive a bill from a previous session and give it advanced standing or send to a committee the evidence taken by that committee's predecessor in a previous session. Such practices are fairly common and the practice of ending one session the day before a new one begins means that the House is virtually always in session even when it takes summer or Christmas recesses.

Another basic principle is that debate usually takes place when there is a motion before the Chair. A former Clerk of the House, Arthur Beauchesne, compared the parliamentary motion to the ball in a game of golf.

There are many things to do in that game. The player must have the proper stance, he must hold his club in a certain way, avoid hooks, slices and ditches but above all, when swinging his club he must keep his eye on the ball.(1)

When a Member is speaking he is almost always dealing with a motion. This may be substantive, privileged, subsidiary, incidental or superseding and each one is governed by special rules. Few Members of Parliament know the intricacies of procedure and they rely heavily on the table officers of the House for such matters.

## B. The Legislative Process in the House

Every session of Parliament includes a debate on the Speech from the Throne and there is usually at least one budget debate and several opportunities to discuss the Government's estimates. The House also deals with numerous bills from Ministers and Private Members which propose new laws or changes in existing ones. The basic step in the legislative process is still the "reading" although nowadays no one asks that the text of a bill be read aloud to the House. A bill is carried forward through the legislative process by a long chain of motions, some of which are debatable while others are not.

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(1) Arthur Beauchesne, "Parliamentary Procedure", A Lecture delivered to the Junior Board of Trade, Montreal, December 14, 1939, p. 1.

The first step is for a Member to ask that leave be granted to introduce a specific bill. Assuming this is granted, and it almost always is, he or she then moves that the proposed bill be read a first time and printed. At this point, the bill is entered on the Order Paper and it is up to the Government House Leader to decide when to proceed to second reading, often after consulting with the Opposition and the Minister involved. Eventually it is moved that the proposed bill be read a second time and sent to a legislative committee. In the case of Private Members' bills one hour is set aside four days a week to deal with them.

Second reading is the point where the principle of a bill is open to discussion. The Prime Minister, the Leader of the Opposition and the first three speakers may speak for up to forty minutes in favour or against the bill. Subsequent speakers during the next eight hours of consideration of the bill may speak for twenty minutes and after each Member's speech up to ten minutes is available for other Members to ask questions or make comments. Members speaking after the eight-hour period are allotted ten minutes of speaking time.

If the Opposition takes strong exception to the bill Members may talk on and on and eventually force the Government to bring in a motion limiting the amount of time allocated for the bill. There are three alternative mechanisms for allocation of time for debate on a bill. If there is agreement among all parties to allot a specific number of days or hours to proceedings at one or more stages of any bill, the Minister may propose a motion setting out the agreed allocation which must be voted on immediately without debate or amendment. In the case of only qualified agreement of the parties on time allocation, the Minister may propose a motion setting out the terms. The motion may be debated for up to two hours before voting, with no Member allowed to speak more than once or for longer than ten minutes. If there is no agreement on time allocation, a Minister may still propose a time allocation motion but must give notice of his or her intention to do so and the time allotted to any stage may not be less than one sitting day. The motion may be debated for up to two hours with no member speaking more than once or for longer than ten minutes.



After being passed at second reading, the bill is then sent to a legislative committee where it is examined clause by clause. The committee may suggest certain technical changes in the details of the bill but it cannot alter the principle which has been adopted by the House. The bill is then reported by the committee back to the House with or without amendments and the House is given an opportunity to deal with the bill in this form. Finally a motion is introduced that the proposed bill be read a third time and passed. At this point the bill cannot be changed either in its principle or its details; it must be accepted or rejected as it stands. It is very rare for a bill to be defeated or postponed at third reading although it has happened, usually as a result of some new evidence or other information coming to light.

After third reading the bill goes to the Senate, where it also receives three readings. (Bills originating in the Senate would go to the House of Commons at this stage.) After passage in both chambers, the bill is then signed by the Governor General and becomes law either immediately or on a date proclaimed by the Governor General.

The subject matter of a bill can be studied by a Senate Committee while the bill is still being considered by the House of Commons. This "pre-study" mechanism can speed up the legislative process while still allowing time for the Senate to examine legislation in detail.

Over the years many changes have taken place in parliamentary procedure but problems still remain. For example, with three readings and extensive committee hearings there is inevitably much repetition in a debate. All the arguments for and against a bill could probably be heard in a much more efficient manner. On the other hand, many bills are very complicated and require a great deal of time and study before their implications become clear, particularly in a country as large as Canada. Under the present system any controversial piece of legislation is likely to take two or three months or longer before making its way through all the stages of Parliament and during this time public opinion has a chance to form and Members of Parliament can receive feedback from their electors. The practice of clearing the slate at the end of each

session tempts the Opposition to stall and an average of 20% of Government bills die on the Order Paper each session. Still this practice has a revitalizing function and allows the Government to get rid of an embarrassing bill without withdrawing it and losing face.

Many of the current rules governing the legislative process have only been implemented in the past three and a half years, after nearly a decade of efforts at Parliamentary reform. Those efforts have been summarized by the Special Committee on Reform of the House of Commons:

No major reforms took place during the 1970s, although a sub-committee of the Standing Committee on Procedure and Organization was created in 1976 to look into the use of time, private members' business and committees. Parliamentary reform was an issue during the 1979 election, and a position paper on the subject was tabled in November 1979 by the late Hon. Walter Baker. Following defeat of the minority Clark government the issue was again put off, but not for long.

An unprecedented situation arose in March 1982 when the division bells rang for fifteen days as the result of an opposition protest over introduction of what they argued was an omnibus bill relating to the National Energy Policy and affecting several government departments.

When the problem was finally resolved, a wide-ranging debate on parliamentary reform was held, and on May 31, 1982, a twenty-member Special Committee on Standing Orders and Procedure was created. Its mandate was to consider the Standing Orders of the House and procedures in the House and its committees and to draft Standing Orders to give effect to the changes it recommended. The committee produced ten reports covering many areas of procedure and organization.

In December 1982, the major recommendations in the committee's Third Report were adopted unanimously by the House on a one-year experimental basis. As a result, an annual parliamentary calendar was established; evening sittings were abolished and replaced by an earlier start in the morning; votes were scheduled on a more predictable basis; ninety-second statements by private members were introduced before question period, replacing motions under Standing Order 43; and time limits for most speeches were shortened, with a ten-minute period set aside for questions and comments following the speeches.



While the recommendations of the Third Report were adopted, subsequent reports on many varied and contentious issues were not dealt with before dissolution of the thirty-second Parliament in 1984. Among other things these reports recommended a new method of electing the Speaker; establishment of legislative committees; new committees to improve scrutiny of financial matters; and numerous other organizations and procedural changes.<sup>(2)</sup>

Along with the changes to the committee system discussed below, made as a result of the Special Committee's report and recommendations, changes have also been made recently to the handling of Private Members' bills. Until now, it has been common for hundreds of these to sit on the Order Paper. A few would be "talked out" in debate while the vast majority would languish on the Order Paper and die at the end of the session. Now, the Clerk of the House holds a random draw to determine order of preference for Private Members' bills, following which the Standing Committee on Private Members' Business meets to select, after consultation with the Members proposing the bills, not more than six from among the first twenty items in order of preference, and an appropriate number from among any subsequent ten items. At any time, there may be no more than six selected items on the order of preference. Those bills are then allocated time - up to five hours - for debate during Private Members' hour. Any Private Member's bill passing second reading is sent to a legislative committee and may subsequently be reported back to the House for Third Reading. The result should be much more Private Members' legislation coming to a vote in the House.

### C. The Role of Committees<sup>(3)</sup>

As the amount of public business increased pressure developed to increase the use of parliamentary committees. The advantages gained when a large body such as the House of Commons instructs groups

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- (2) Canada, House of Commons, Special Committee on Reform of the House of Commons, Report, June 1985, p. 13.
- (3) See also two other Research Branch Background Papers: "The New Provisional Standing Orders" (BP-142E) and "Parliamentary Committees: The Protection of Witnesses, the Role of Counsel and the Rules of Evidence" (BP-141E).

selected from its Members to deal with items of business and to report their findings are obvious: the business can be handled more thoroughly; the opinions, explanations and evidence of persons who are not Members can be heard conveniently; specific findings can be put before the parent body for acceptance and two or more committees can operate concurrently without interfering with each other, thus facilitating the amount of work accomplished. During the 1960s the committee system was reformed in the hope that it would "assume a critical significance related more closely to the national interest as a whole than to simple political differences".<sup>(4)</sup> Committees were given the responsibility for handling the committee stage of legislation unless the House specifically chooses to refer a bill to Committee of the Whole. The detailed consideration of the estimates, which previously took up much of Parliament's time in Committee of Supply, was also passed on to the standing committees. The Canadian House of Commons now has a system of active specialist committees, and most Members of Parliament spend more time in committee sittings (frequently as many as five in a week) than they do in the House itself. Both special committees and standing committees have an important investigative function as well. The committee system has been changed considerably this year in response to the Report of the Special Committee on Reform of the House of Commons. Those changes will enhance the ability of standing committees to launch investigative studies since they will spend considerably less time dealing with legislation.

There are four types of committees in the House of Commons - standing committees, joint committees, special committees and legislative committees. There are presently 25 standing committees paralleling, for the most part, the departmental structure. Standing committees have from 7 to 15 members, with most having seven members. The party composition of standing committees reflects voting strength in the House. On a normal committee of seven, five are Progressive Conservatives, one is a New Democrat, and one is a Liberal. The joint committees deal mainly with matters of interest to both the Senate and the House of Commons and they

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(4) Canada, House of Commons, Special Committee on Procedure, 1968, Third Report, paragraph 12.



draw their membership from both Chambers. They include the Joint Committee on Parliament, the Joint Committee on Regulations and Statutory Instruments, and the Joint Committee on Official Languages. The House of Commons and the Senate may also create special committees from time to time to study specific questions. Recent examples include the Special Joint Committee on Reform of the Senate and the Special Joint Committee on Canada's International Relations.

Legislative committees are struck specifically for consideration of individual bills. At the beginning of each session the Speaker appoints a minimum of ten Members to act as Chairmen of Legislative committees. Those Members, together with the Deputy Speaker and Chairman of Committees of the Whole, the Deputy Chairman of Committees of Whole, and the Assistant Deputy Chairman of Committees of the Whole constitute the Panel of Chairmen. Between first and second readings of a bill, the Striking Committee prepares and reports a list of not more than thirty Members to sit on a legislative committee. If the House adopts the motion for second reading and reference to a legislative committee, the Speaker appoints a Chairman for the committee from the Panel of Chairmen. A legislative committee is empowered to examine and enquire into the bill referred to it, to hear evidence, and to report the bill back to the House of Commons with or without amendments.

Committees use the questioning of witnesses as their basic technique for gathering information. For examination of government bills and estimates, Ministers, normally accompanied by their chief departmental officers, are the usual witnesses. When policy issues are being examined, witnesses from outside the government appear before the committees.

Strategy is often mapped out by steering committees (technically, sub-committees on agenda and procedure). These committees decide who shall be witnesses, whether the committee will request professional staff, and make other arrangements. These decisions can be highly partisan or there may be a very cooperative spirit, depending on the degree of volatility of the issue being considered.

The members may disagree, for example, on the value of travel outside Ottawa. Some argue that it is an important function of

Parliament as a whole to fulfil an educative role, to take the government, at least to some extent, to the people. When a committee travels to Vancouver or to Halifax or to any of the smaller or more remote centres the government is brought closer to the people. Such travel is often viewed as essential to allow the public to present its views to a committee. Others object, partly on the grounds of cost, and partly because travel of this kind requires so many Members to be away from Ottawa.

## CONCLUSION

The current organization of the committee system is the culmination of years of effort by Parliament itself and by academics interested in parliamentary government to overhaul the legislative process to achieve two aims: more efficient decision-making and enhancement of the role of the Member of Parliament in the process. Reductions in the size of committees afford more opportunity for Members to specialize. The creation of legislative committees will allow standing committees to perform an investigatory function and will allow Members with a special interest in individual bills to play a role in examining them without having to develop an interest in a broad policy area. Combined with the new rules of procedure, which streamline the process of debate on legislation, these changes should carry us some distance towards accomplishing the aims of parliamentary reform.

Of course sometimes new rules are not enough and as a former Speaker once said:

The character, the strength and the success of any legislature must, in the long run, depend on the attitude of its members to their responsibilities; the motivation of the people who elect them and to whom they are accountable; and the quality of the leadership provided to them. Parliamentary government must be a responsible government and the burden of responsibility must be carried by leader, legislator and elector alike. Given responsible leadership, procedures must then be devised that will provide to parliamentarians the right of discussion and to governments the right of decision.(5)

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(5) Alan Macnaughton, "The Adoption of Parliamentary Procedure to Meet Present-Day Needs", Speech to an International Symposium on Parliamentary Problems, Geneva, November 4, 1965, p. 16.













